

## CHAPTER IV ELIGIBILITY CRITERIA

### SECTION 1 - DETERMINING HOUSEHOLD ELIGIBILITY

#### **4100 DETERMINING HOUSEHOLD ELIGIBILITY**

The following steps will lead to the final eligibility determination of a household.

- A. Establish household composition (membership).
- B. Establish the household's residency on the reservation or status as an Indian Tribal household, if living in a near area.
- C. Determine if the household automatically meets the financial eligibility criteria requirements without testing resources and income (PA, GA, and SSI households).
- D. Determine if the nonassistance household meets financial eligibility criteria requirements:
  - 1. Test the household's net food distribution resources against the resources standards in paragraph 4400, below.
  - 2. Test the household's net food distribution income against the food distribution income standards (see Exhibit M, attached) for the appropriate household size.

#### **4101 Determining Eligibility and Benefit Level for Households with a Disqualified Member(s)**

The disqualified member is not included when determining the household's size for purposes of assigning the level of commodities to be received by the household, or for purposes of comparing the household's net monthly income with the income eligibility standards. See paragraph 4730 for instructions on the handling of the income and resources of a disqualified household member.

**SECTION 2 - NONFINANCIAL ELIGIBILITY CRITERIA****4200 NONFINANCIAL ELIGIBILITY STANDARDS**

This section provides a description of the nonfinancial criteria (i.e., residency and household composition) that all households must meet.

**4210 RESIDENCY**

A household must be living on the reservation in which it files an application for participation. Households living in approved near areas or in FNS service areas in Oklahoma (see paragraph 4212, below) must qualify as an Indian Tribal Household to participate in the program.

For the purposes of determining residency, a household's place of residence does **not** have to be a permanent structure at a fixed address, such as a house, apartment, mobile home or trailer, hogan, or pueblo. Also, an ITOs/State agency can not impose any durational residency requirements. However, persons must be living on the respective reservation, near area, or FNS service area the majority of the time as their primary residence. Persons on the reservation solely for vacation, including weekend and holiday stays, can not be considered residents. No household may participate in the Food Stamp Program or in the Food Distribution Program in more than one geographical area at the same time.

**4211 Citizenship**

ITOs/State agencies may choose to either provide or deny program benefits and services to persons who are not U.S. citizens or do not meet the definition of qualified alien at 8 U.S.C. 1641(b). If a State agency chooses to expand participation to unqualified aliens, it should consult with State or tribal legal counsel in the development of any new procedures.

ITOs/State agencies that choose to continue to limit participation to qualified aliens should be aware that section 289 of the Immigration and Nationality Act (INA) provides permanent resident status to persons born in Canada who have at least 50 percent Native American blood. Therefore Canadian Indians who fulfill the requirements of section 289 of the INA are considered to have legal resident status and must be treated the same as qualified aliens for Food Distribution Program purposes. To demonstrate qualification under section 289 of the INA, individuals must show proof of birth in Canada, and certification of at least 50 per centum Native American blood. The following documents, issued by the Immigration and Naturalization Service (INS), identify the holder as qualifying for permanent resident status under section 289 of the INA: INS Form I-551 with the code S13; or unexpired temporary I-551 stamp in Canadian passport or on INS Form I-94 with the code S13.

**4212 Near Area or FNS Service Area**

The Food Distribution Program may operate in areas near a reservation and in FNS service areas in Oklahoma, as specified in the ITO's/State agency's Plan of Operation and approved by FNS. Households living in these approved areas may participate in the program as an Indian Tribal Household, if at least one household member is recognized as a tribal member of any Indian tribe (see definition of "Indian Tribal Household" in paragraph 1110, above). The Bureau of Indian

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Affairs of the U.S. Department of Interior periodically publishes a notice in the Federal Register listing the federally recognized Indian tribes in the United States. This list can be found on the FNS web site at <http://www.fns.usda.gov/fdd/programs/fdpiir>.

**4213 Urban Places**

Households living in urban places within a reservation may, if otherwise eligible, participate in the Food Distribution Program. However, participation is prohibited in urban places outside a reservation (in accordance with 7 CFR 253.4(d)), and in FNS service areas in Oklahoma (in accordance with 7 CFR 254.5(b)). ITOs/State agencies may request a waiver of these requirements. Waiver requests, with appropriate justification, must be submitted to the appropriate FNS Regional Office.

**4220 HOUSEHOLD COMPOSITION**

Households must list on their applications the various members to be considered for food distribution benefits. The ITO/State agency must examine each application to determine if there are members who may not be eligible to participate in the household (see paragraph 3410 above for a listing of nonhousehold members and ineligible persons).

The ITO/State agency must verify any questionable information provided by the household about the composition of the household, such as the household's size. However, as it is difficult to verify if a group of individuals customarily purchases and prepares meals together and, therefore, constitutes a household, the ITO/State agency will generally accept the household's statement regarding food preparation and purchasing (see paragraph 3400, above).

**SECTION 3 - FINANCIAL ELIGIBILITY CRITERIA  
CATEGORICALLY ELIGIBLE HOUSEHOLDS****4300 CATEGORICALLY ELIGIBLE HOUSEHOLDS****4310 PA AND SSI HOUSEHOLDS**

Households in which all members are included in a federal public assistance or SSI grant, except those SSI participants discussed in paragraph 3412, above, automatically meet resource and income eligibility requirements for the Food Distribution Program. Therefore, the ITO/State agency will not test any of the resources or incomes of the households against the Food Distribution resource and income standards.

**4320 GA HOUSEHOLDS**

Households in which all members are included in an FNS approved general assistance grant (see paragraph 3220, above) or a combination of GA, PA, and SSI grants, automatically meet resource and income eligibility requirements for the Food Distribution Program. The ITO/State agency will not test any of the resources or incomes of these households against the Food Distribution resource and income standards.

**4330 NONASSISTANCE HOUSEHOLDS**

The ITO/State agency must test the resources and incomes of all households, in which one or more members do not participate in PA, SSI and/or GA grants, against the Food Distribution Program resource and income standards. Nonassistance households must meet the financial as well as the nonfinancial eligibility criteria in order to receive USDA commodities.

**SECTION 4 - RESOURCES****4400 RESOURCES**

This section provides the uniform resource standards and a description of nonexempt and exempt resources.

**4410 STANDARD HOUSEHOLD LIMITS FOR RESOURCES**

The household's resources at the time the application is filed must be used to determine the household's eligibility. Eligibility must be denied or terminated if the value of nonexempt resources for the household exceeds:

- A. \$3,000 for all households with two or more members if at least one member is 60 or over; or
- B. \$1,750 for all other households including all one-person households.

**4420 NONEXEMPT RESOURCES**

In determining the resources of a household, the following resources are counted:

- A. Cash on hand;
- B. Money in checking or savings accounts; and
- C. Saving certificates, stocks or bonds, or other readily negotiable and accessible certificates or instruments.

**4430 EXEMPT RESOURCES**

In determining the resources of a household, the following are not counted:

**4431 Life Insurance and Pension Funds**

The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawal, such as a Keogh Plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

**4432 Disaster Payments**

Any governmental payments that are designated for the rebuilding of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended. Some examples are payments made by the U.S. Department of Housing and Urban Development through the individual and family grant program or disaster loans, or grants made by the Small Business Administration.

**4433 Prorated Income**

Resources that are being prorated and counted as income (e.g., grants awarded to students or income from self-employment).

**4434 Resources Excluded by Law**

Following is a listing of resources excluded by express provisions of Federal statute. (This list is not inclusive.)

- A. Up to \$2000 per year per individual received under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, Sec. 21(a)). This exclusion applies to bonds and cash dividends on stock received from a Native Corporation under ANCSA;
- B. Payments received under the Sac and Fox Indian Claims Agreement (Public Law 94-189);
- C. Payments received by certain Indian Tribal members under Public Law 94-114, Section 6, regarding submarginal land held in trust by the United States;
- D. Payments received by certain Indian Tribal members under Public Law 94-540 regarding the Grand River Band of Ottawa Indians;
- E. Reimbursements from the Uniformed Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Public Law 91-646, Section 216);
- F. Payments made as a result an emergency or major disaster in accordance with Section 312(d) of the Disaster Relief Act of 1974 (Public Law 93-288), as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (Public Law 100-707) (e.g., payments to farmers during natural disasters);
- G. Interests of individual Indians in trust or restricted lands. Interests include the Indian's right to or legal share of the trust or restricted land, and any income accrued from the funds in trust or the restricted lands (see paragraph 4543G, below);
- H. Student financial assistance provided under Title IV of the Higher Education Act, and/or funds received under a Bureau of Indian Affairs student assistance program (20 U.S.C.1087uu);
- I. Stipends paid to Indian vocational training students under the Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101-392). Stipends are defined as a subsistence allowance to cover attendance costs. Attendance costs are tuition and mandatory fees, rental or purchase of any equipment required of all students in the same course of study, books, materials and supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a halftime basis, as determined by the institution.
- J. Payments provided under Public Law 104-204 to cover the health care of children with spina bifida who were born to Vietnam veterans.
- K. Payments made to members of the Standing Rock Sioux Tribe and the Three Affiliated Tribes (Ft. Berthold Indian Reservation) under Section 3505 of Public Law 102-575, the Reclamation Projects Authorization and Adjustment Act of 1992. Locally, these payments may be identified as Joint Tribal Advisory Committee funds, Standing Rock Sioux Tribe Economic Recovery funds, or Three Affiliated Tribes Economic Recovery funds.

**4440 EXEMPT INCOME TREATED AS A RESOURCE**

Nonrecurring lump sum payments as described in paragraph 4549D, below, must be counted as resources in the month received. Land lease and treaty income distributed on an annual basis are considered nonrecurring lump-sum payments (see paragraph 4549E, below), unless received more frequently. Land lease and treaty income distributed more frequently than annually are treated as unearned income (see paragraph 4530J, below).

**4450 JOINTLY OWNED RESOURCES**

Resources owned jointly by separate households must be prorated between or among those households, unless the applicant household can demonstrate that the resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

**4460 RESOURCES OF DISQUALIFIED MEMBERS**

The nonexempt resources of individuals disqualified from participation in the Food Distribution Program are counted in their entirety when determining the eligibility of the remaining household members (see paragraph 4730, below).

**SECTION 5 - INCOME****4500 INCOME**

This section defines nonexcluded and excluded income and allowable deductions.

Household income includes all income from whatever source, except for the exclusions listed in paragraph 4540, below. Income is categorized as earned or unearned. The ITO/State agency must count nonexcluded that is reasonably anticipated to be received over the proposed certification period.

**4510 BASIS OF NATIONAL INCOME ELIGIBILITY STANDARDS**

In accordance with 7 CFR 253.6(e), the income eligibility standards for the Food Distribution Program are the net monthly eligibility standards for the Food Stamp Program, increased by the amount of the applicable standard deduction. The income eligibility standards are adjusted each October 1, as necessary, to reflect changes in the Food Stamp Program income eligibility limits and standard deductions. The income eligibility standards are listed in Exhibit M of this handbook. Revised exhibits must be provided annually by the appropriate FNS Regional Office.

**4511 Income Eligibility Standards for Nonassistance Households**

The ITO/State agency must apply the uniform national income eligibility standards for the Food Distribution Program to nonassistance households. Households that are categorically eligible are treated in accordance with the provisions in paragraphs 4310 and 4320, above.

**4520 EARNED INCOME**

The following types of income are considered earned:

- A. Wages. All wages and salaries of an applicant household. The portion of wages that is garnished for court-ordered support or alimony is considered income (see paragraph 4542.1, below).
- B. Self-employment. The gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Payments from roomers and returns on rental property are considered self-employment income (see paragraph 4720, below).
- C. Training Allowances. Training allowances from vocational and rehabilitative programs sponsored by Federal, State, or local governments to the extent they are not a reimbursement.
- D. Work Study Earnings. College work study earnings are considered earned income, unless excluded by law. Work study programs authorized by Title IV of the Higher Educational Act (20 U.S.C. 1087uu) are excluded; however, some Federal work study programs are not Title IV programs.

**4530 UNEARNED INCOME**

The following types of income are considered unearned. (This list is not inclusive.)

- A. Assistance Payments. Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs, or other assistance programs based on need.
- B. Pension, Social Security, Foster Care. Annuities; pensions; retirement accounts; veteran's or disability benefits; workman's or unemployment compensation; old-age, survivors' or social security benefits; strike benefits; foster care payments for children or adults unless they are counted as boarders (see paragraph 3415, above). The gross amount of these payments is always used, even if taxes and/or other amounts are withheld.
- C. Support and Alimony. Support, such as child support, or alimony payments made directly to the household from nonhousehold members. Foster care payments for children that are categorized as boarders would not be counted as unearned income (see paragraph 3415, above).
- D. Student Financial Assistance. Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits and the like, unless excluded by law. Student financial assistance provided under Title IV of the Higher Educational Act (20 U.S.C. 1087uu) is excluded (see paragraph 4543F, below).
- E. Grants, Interest Payments. Payments from government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source that can be construed to be a gain or benefit.
- F. Income from Disqualified Members. The earned income (less the 20 percent earned income deduction) and unearned income of a disqualified household member less the pro rata share for the disqualified individual. If, for example, there are six members of a household and one of those persons is disqualified, the pro rata share is one-sixth of the income. The household receives five-sixths of the disqualified member's income for Food Distribution Program eligibility purposes.
- G. Federal Housing Administration's "Family Living Plan". Payments received on a monthly basis for household expenses.
- H. Foster Care Payments. Payments received for the foster care of children counted as members of the household in which they reside (see paragraph 3415, above).
- I. Per Capita Payments from Gaming and Other Tribal Enterprises. Profits from gaming and other tribal enterprises paid to tribal members on a regular basis, regardless of the frequency.
- J. Land-Lease and Treaty Income. Land lease and treaty income payments, if payments are received more frequently than annually. See paragraph 4549D for treatment of land-lease and treaty income distributed on an annual basis.
- K. Adoption Subsidies. Adoption subsidies, if they are received on a recurring basis.

**4540 EXCLUDED INCOME**

The following types of income are excluded when computing a household's total income for testing against the Food Distribution Program income standards. No other income will be excluded.

**4541 In-Kind Income**

Any gain or benefit, not in the form of money, that is payable directly to the household, such as in-kind benefits. For example, meals, clothing, public housing, or produce from a garden are not considered income for eligibility purposes.

**4542 Vendor Payments**

A payment made in money on behalf of a household must be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend, who is not a household member, pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

**4542.1 Exception to Vendor Payment Rule - Legally Obligated Payments**

Monies that are legally obligated and otherwise payable to the household, but that are diverted by the provider of the payment to a third party for a household expense, must be counted as income and not considered as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that would otherwise have been paid to the household. Such funds include wages earned by a household member and, therefore, are owed to the household, a public assistance grant to which a household is legally entitled, and support or alimony payments that legally must be paid to a household member.

If an employer, agency, or former spouse who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments are counted as income to the household. However, if an employer, agency, former spouse, or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments are considered vendor payments.

**A. Example 1.**

1. Income. Wages earned by a household member that are garnished or diverted by an employer, and paid to a third party for a household's expenses, such as rent.
2. Vendor Payment. The employer pays a household's rent directly to the landlord in addition to paying the household its regular wages or the employer provides housing to an employee. The value of the housing is not counted as income.

**(4542.1)****B. Example 2.**

1. Income. All or part of a public assistance grant that would normally be provided to the household is diverted to a third party or to a protective payee for purposes such as managing a household's expenses.
2. Vendor Payment. A payment by the State agency that would not normally be provided to the household, and is over and above normal public assistance grant, and is made directly to a third party for a household expenses. This rule applies even if the household has the option of receiving a direct cash payment.

**C. Example 3.**

1. Income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense.
2. Vendor Payment. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) that are paid to a third party rather than the household, even if the household agrees to the arrangement.

**4543 Income Excluded by Law**

The ITO/State agency will not count any income that is specifically excluded by any other Federal statute from consideration as income. The following laws provide exclusion. (This list is not inclusive.):

- A. Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Public Law 91-646, Section 216). The following payments are included under Title II of this Act:
  1. Payments to persons displaced as a result of the acquisition of real property;
  2. Relocation payments to a displaced homeowner toward the purchase of a replacement dwelling. Such payment may only be made to a displaced owner who purchases and occupies a dwelling within one year following displacement; and
  3. Replacement housing payments to displaced persons not eligible for a homeowner's payments.
- B. Up to \$2000 per year per individual of payments received under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, Section. 21(a)). This exclusion applies to bonds and cash dividends on stock received from a Native Corporation under ANCSA.

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- C. Payments to volunteers under the Domestic Volunteer Services Act of 1973 (Public Law 93-113, as amended), including the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program, Senior Companion Program, and Americorps\*VISTA are excluded as income. Also, payments received by individuals participating in the Senior Community Service Employment Program authorized under the Older American Act of 1965 (Public Law 89-73) are excluded as income. Under these programs, participants may receive an hourly tax-free wage, reimbursement for transportation expenses, an end-of-service stipend, or an education award.
- D. Income derived from certain submarginal land of the United States that is held in trust for certain Indian Tribes (Public Law 94-114, Section 6).
- E. Payments received by certain Indian Tribal members under Public Law 94-540 regarding the Grand River Band of Ottawa Indians.
- F. Student financial assistance received from a program under Title IV of the Higher Education Act, and/or funds received under a Bureau of Indian Affairs student assistance program (20 U.S.C.1087uu).
- G. Up to \$2,000 per year of income received by individual Indians that is derived from interests in trust or restricted lands.
- H. Payments made as a result of an emergency or major disaster (e.g., payments to farmers during natural disasters) in accordance with Section 312(d) of the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (Public Law 100-707).
- I. Allowances, earnings and payments received by individuals participating in programs under the Workforce Investment Act of 1998.
- J. Stipends paid to Indian vocational training students under the Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101-392). Stipends are defined as a subsistence allowance to cover attendance costs. Attendance costs are tuition and mandatory fees, rental or purchase of any equipment required of all students in the same course of study, books, materials and supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a halftime basis, as determined by the institution.
- K. Payments provided under Public Law 104-204 to cover the health care of children with spina bifida who were born to Vietnam veterans.
- L. Payments made to members of the Standing Rock Sioux Tribe and the Three Affiliated Tribes (Ft. Berthold Indian Reservation) under Section 3505 of Public Law 102-575, the Reclamation Projects Authorization and Adjustment Act of 1992. Locally, these payments may be identified as Joint Tribal Advisory Committee funds, Standing Rock Sioux Tribe Economic Recovery funds, or Three Affiliated Tribes Economic Recovery funds.

The source and amount of the payments received under any of the authorities identified above must be verified before they are excluded.

**4544 Allowable Educational Expenses Paid From Nonexcluded Student Financial Assistance**

Student financial assistance includes deferred educational loans, grants, scholarships, fellowships, and veterans' educational benefits. The portion of student financial assistance not excluded in paragraph 4543F, above, which is used to pay allowable educational expenses, is excluded from income. Allowable educational expenses include tuition and mandatory fees, books, supplies, transportation, and miscellaneous personal expenses, other than normal living expenses. Mandatory fees are those charged to all students, or are charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students in order to enroll in a chemistry course would be excluded. (See paragraph 4710, below.)

Student financial assistance used for or earmarked by the provider for normal living expenses is counted as income. Also, the exclusion in this paragraph does not apply to allowable education expenses paid from sources other than student financial assistance, such as student earnings, public assistance, or household resources (e.g., savings account or negotiable bonds).

**4545 Loans**

All loans, including loans from private individuals as well as commercial institutions, other than deferred educational loans.

**4546 Reimbursement for Expenses**

Reimbursements for past or future expenses are excluded to the extent that they do not exceed actual expenses. For example, household members may receive reimbursements or flat allowances for travel expenses they incur (e.g., mileage, lodging, and meals) while attending training or working a temporary duty assignment. Household members may also be reimbursed for books, uniforms, equipment, tools and other job or training related expenses.

**4547 Third Party Payments**

Monies received and used for care and maintenance of a third party beneficiary, who is not a member of the household.

**4548 Earnings of Children**

The earned income of members of the household who are students at least halftime, and who are not yet eighteen. Their income is excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. Individuals are considered children for this exclusion if they are under the parental control of another household member. Emancipated minors are not considered children for the purposes of this provision.

**4549 Miscellaneous Exclusions**

- A. Irregular Income. Any income in the certification period that is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.

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- B. Costs of Self-Employment. The cost of producing self-employment income. See paragraphs 4723 and 4724, below, for the procedures on computing the cost of producing self-employment income.
- C. Recoupments. Monies withheld from an assistance payment, earned income, or other income source, that are voluntarily or involuntarily returned to repay a prior overpayment received from that income source.
- D. Nonrecurring Lump-Sum Payments. Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, PA, railroad retirement pension or other payment; retroactive lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. Unless specifically excluded by Federal law (see paragraph 4434, above), these payments must be counted as resources in the month they are received, and each month thereafter that the funds are still available to the household.
- E. Land-Lease or Treaty Income. If annual payments are distributed to tribal members, such payments are considered nonrecurring lump-sum payments. If received more frequently than annually, the payments must be counted as income (see paragraph 4530J, above).
- F. Title IV-D Payments. Child support payments received by TANF recipients that must be transferred to the agency administering Title IV-D of the Social Security Act of 1935, as amended, to maintain TANF eligibility.

#### **4550 DEDUCTIONS FROM INCOME**

The deductions allowed for the Food Distribution Program are listed below. See paragraph 4630, below on determining deductions.

Under paragraphs 4552, 4553 and 4554, below, expenses covered by excluded reimbursements or vendor payments are not deductible.

#### **4551 Earned Income Deduction**

A 20 percent deduction is applied to gross earned income, including self-employment income.

- A. Self-Employment Income. The 20 percent earned income deduction is applied after the costs of doing business are subtracted from the gross self-employment income (see paragraph 4640, below).
- B. Unearned Income Subject to Withholdings. The 20 percent earned income deduction is **not** applied to unearned income that is subject to withholdings (e.g., unemployment compensation).
- C. Disqualified Household Member. The 20 percent earned income deduction is applied to the earned income of a disqualified household member (see paragraph 4731B, below).

**4552 Dependent Care**

Payments for the actual cost of care for a child or other dependent when necessary for a household member to search for, accept, or continue employment or to attend training or pursue education that is preparatory to employment. This deduction must not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the forty-eight States and the District of Columbia. The allowable dependent care cost per dependent is provided in Exhibit M of this handbook and will be updated as needed.

Dependent care expenses are only deductible if the service is provided by a non-household member and the household makes a money payment for the service. For example, a deduction is not allowed if another household member provides the care, or compensation for the care is provided in the form of an in-kind benefit such as food.

**4553 Child Support**

Legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The ITO/State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member can not be included in the child support deduction. See paragraph 3539A, above, on verification requirements for the child support deduction.

**4554 Medicare Part B Medical Insurance Premium**

The full amount of the Medicare Part B Medical Insurance Premium that is withheld from the monthly Federal retirement or disability payment of a household member, or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary, or where the household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service. The amount of the premium is adjusted January 1 of each year by Medicare. The current Medicare Part B Medical Insurance Premium amount is available at <http://www.medicare.gov>. See paragraph 3539B, above, on verification requirements for the Medicare Part B Medical Insurance Premium.

**SECTION 6 - DETERMINING HOUSEHOLD INCOME****4600 GENERAL STANDARDS FOR DETERMINING INCOME**

For the purpose of determining the household's eligibility for the Food Distribution Program the ITO/State agency must take into account the income the household is currently receiving and any anticipated income the household and the ITO/State agency are reasonably certain will be received during the certification period.

- A. If the amount of or the timing of income that will be received is uncertain, the ITO/State agency must not count that portion of the household's income that is uncertain. For example, a household anticipating income from a new source, such as a new job, or recently applied for PA benefits, may be uncertain as to the timing and amount of the initial payment. These monies would not be counted by the ITO/State agency unless there is reasonable certainty concerning the month in which the payment will be received and the amount.
- B. If the exact amount of the income is not known, that portion of it that is anticipated with reasonable certainty is counted as income.
- C. In cases where the receipt is reasonably certain, but the monthly amount may fluctuate, the household may elect to average the income as described in paragraph 4622, below.

**4610 DETERMINING INCOME****4611 Income in the Past 30 Days.**

Income received during the past 30 days must be used as an indicator of the income that is available to the household during the certification period, unless changes in income have occurred or can be anticipated.

- A. Steady Employment. In cases where the head of the household is steadily employed, income from the previous month is usually a good indicator of the amount of income that can be anticipated in the month of application and subsequent months. If information supplied by the household or a collateral contact indicates that future income will differ from the previous month's income, the ITO/State must use such information to make a reasonable estimate of anticipated income. The method used to determine income must be fully documented in the case file.
- B. Hourly and Piece-Work Wages. When income is received on an hourly wage or piece-work basis, weekly income may fluctuate if the wage earner works less than eight hours some days or is required to work overtime on others. In this case the ITO/State agency should consult with the household to determine the "normal" amount of income expected as a result of one-week's work and if this is reasonably certain to be available on a regular basis during the certification period. This amount should be used to determine monthly income.

**4612 Seasonal Income**

If the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The ITO/State agency must exercise particular caution in using income from a past season as an indicator of income for the certification period. The income may fluctuate from one season in one year to the same season in the next year. However, in no event will the ITO/State agency automatically attribute to the household the amounts of any past income.

**4613 Withheld Wages**

Wages held by the employer at the request of the employee must be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, are not counted as income to the household, unless the household anticipates that it will receive an advance or income from wages that were previously held by the employer.

**4614 Self-Employment Income**

Monies received from a self-employment enterprise less the allowable costs of doing business are to be considered when determining eligibility for the Food Distribution Program. Procedures for establishing countable self-employment earnings are discussed in more detail in paragraphs 4720 through 4727, below.

**4615 Anticipated Income**

Income anticipated during the certification period must be counted as income only in the month it is expected to be received, unless the income is averaged. Nonrecurring lump-sum payments are counted as a resource starting in the month received and not counted as income.

**4620 ASSIGNING INCOME FOR THE CERTIFICATION PERIOD**

The following paragraphs describe the rules and procedures to be used for assigning monthly income levels.

**4621 Actual Versus Converted Income**

The ITO/State agency must choose from among the following options to determine monthly income when a full month's income is anticipated and income is received on a weekly or biweekly basis:

- A. Convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15;
- B. Convert the income to a monthly amount by multiplying weekly and biweekly amounts by the ITO's/State agency's conversion standard; or
- C. Use the exact figure if it can be anticipated for each month of the certification period

**4622 Averaging Income -- Optional**

In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate and the household's income is close to the income eligibility limit, the ITO/State agency may elect to average income provided that such averaging does not disadvantage the household. The averaging must be based on income that is anticipated to be available to the household during the certification period.

**4623 Averaging Income -- Mandatory**

- A. Contract or Self-Employment Annual Income. Contract employees or households whose self-employment income represents the household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, must be annualized over a 12-month period. These households may include school employees, share croppers, farmers, and other self-employed households. The procedures for averaging self-employed income are described in paragraph 4725, below.
- B. Non-Annual Contract or Self-Employment Income. Households whose contract or self-employment income represents only a part of the household's annual support, must have their income averaged over the period of time it is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year must have their self-employment income averaged over the summer months rather than a 12-month period.
- C. Educational Grants, etc. Households receiving scholarships, deferred education loans, or other educational grants must have such income, after exclusions, averaged over the period for which it was provided. See paragraph 4710, below, for instructions on handling student income.

**4630 DETERMINING DEDUCTIONS****4631 Limitation on Allowable Deductions**

The income deductions allowed under the Food Distribution Program are limited to those listed in paragraph 4550, above.

**4632 Billed Expenses Deducted in Month Due**

Deductions are allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. Amounts carried forward from past billing periods are not deductible even if included with the most recent billing and actually paid by the household. Expenses can only be deducted once.

**4633 Actual/Converted Expenses**

If the household is billed more frequently than monthly for expenses, the certification worker must use the conversion procedure mandated by the ITO/State agency in paragraph 4621, above.

**4640 CALCULATION OF NET MONTHLY INCOME**

The following steps lead to the determination of a household's net monthly income. See paragraphs 4710 and 4720, below, for more details on determining monthly income for households with student financial assistance or self-employment income.

- A. Total Gross Earned Income. Add together the gross monthly income earned by all household members to determine the household's total gross earned income.
- B. Total Self-Employment Income. If applicable, add together the self-employment income (as calculated at paragraph 4727, below) from the various enterprises engaged in by all household members to determine the household's total self-employment income.
- C. Total Gross Earned and Self-Employment Income. Add together the total gross earned income from 4640A, above, and the total self employment income from 4640B, above.
- D. Net Monthly Earned Income. Subtract 20 percent from the total amount from 4640C, above, to determine the net monthly earned income.
- E. Unearned Income. Add to net monthly earned income (4640D), the total monthly unearned income of all household members, minus income exclusions allowed under paragraph 4540, above.
- F. Student Financial Assistance. If applicable, add the average monthly student financial assistance (as calculated at paragraph 4711, below).
- G. Other Allowable Deductions. Subtract allowable monthly expenses for dependent care, child support, and Medicare Part B Medical Insurance Premium, if applicable.

## SECTION 7 - DETERMINING INCOME OF SPECIAL HOUSEHOLDS

### 4700 GENERAL STANDARDS

This section addresses the eligibility of households with difficult determinations and/or for which there are special policies or procedures:

- A. Households receiving student financial assistance;
- B. Household with self-employment income;
- C. Households with disqualified members; and
- D. Households with nonhousehold members, such as persons receiving SSI in cash-out States.

### 4710 HOUSEHOLDS RECEIVING STUDENT FINANCIAL ASSISTANCE

Households with students may have unusual sources of income. Income peculiar to student households includes scholarships, fellowships, educational grants, deferred payment loans, veteran's educational benefits, cash gifts or awards for educational expenses, and cash from parents. Such sources of income result in an uneven cash flow. Student financial assistance payments may be received in one payment but are intended to cover a specific period of time--a semester, school year, etc. Likewise, the major expenses of education--tuition and mandatory fees--are also paid at one time, again emphasizing the uneven cash flow. Students under 18 years of age are granted an exemption for any income earned through employment or self-employment, except for emancipated minors that are no longer under parental control of another household member (see paragraph 4548, above).

### 4711 **Determining Average Monthly Amount of Student Financial Assistance**

The following method is used to determine the average monthly amount of student financial assistance received by a household member. This calculation must be done separately for each household member that has student financial assistance:

- A. Total the household member's student financial assistance not excluded by law (see paragraph 4543F, above), e.g., educational loans on which repayment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and work study earnings. **Do not include in this step** funds received by the student from other sources, such as earnings or public assistance. Earned income and unearned income are included in the calculation of the household's monthly income at paragraph 4640, above.
- B. Subtract the portion of the student financial assistance used for or earmarked by the provider for allowable educational expenses (see paragraph 4544, above). Allowable educational expenses include tuition and mandatory school fees, books, supplies, transportation, and miscellaneous personal expenses other than normal living expenses. Mandatory school fees include the rental or purchase of equipment, material, and/or supplies related to the pursuit of the course of study involved. **Do not subtract in this step** student financial assistance used for or earmarked by the provider for normal living expenses.
- C. Average the remaining funds over the period the student financial assistance is intended to cover (e.g., divide by 9 for a 9-month school year).

(4711)

- D. This amount is household member's average monthly student financial assistance. Apply this amount to the calculation of the household's monthly income at paragraph 4640F, above.

#### **4720 HOUSEHOLDS WITH INCOME FROM SELF-EMPLOYMENT**

A household may engage in one or more type of self-employment enterprise. For example, a husband may be a self-employed landscaper, while his wife may make and sell crafts. The costs of doing business are subtracted from the income produced by a self-employment enterprise in determining the monthly self-employment income amount. However, the income and costs of doing business for each enterprise must remain separate. For example, the costs of making and selling crafts can only be subtracted from the income produced by the crafts enterprise. Therefore, a separate calculation for each self-employment enterprise must be done, as described in paragraph 4727, below.

##### **4721 Income from Rental Property**

Income derived from rental property is considered self-employment income. The cost of doing business, such as advertising fees and repairs, may be deducted from the rental income (see paragraph 4727D, below).

##### **4722 Income from Capital Gains**

The term "capital gains" refers to the profit from the sale or transfer of capital assets used in a self-employment enterprise, or securities, real estate, or other real property held as an investment for a set period of time. For Food Distribution Program purposes only the net profit from the sale or transfer is considered income.

Net income is determined by subtracting allowable costs related to that sale or transfer (see paragraph 4727D, below). The following rules apply to allowable (excludable) costs of doing business related to capital gains:

- A. Proceeds from the sale of farm products that are reinvested in the farm are excludable;
- B. Sale proceeds that are used to buy food for livestock are excludable;
- C. Sale proceeds used to purchase land or make payments on the mortgage principal are **not** excludable.

##### **4723 Costs of Producing Self-Employment Income -- Allowable Exclusions**

Allowable costs of producing self-employment income include, but are not limited to:

- A. Labor;
- B. Stock, raw materials, seed and fertilizer;
- C. Interest paid to purchase income producing property;
- D. Insurance premiums;

(4723)

- E. Taxes paid on income producing property;
- F. Proceeds from the sale of farm products that are reinvested in the farm. The proceeds from the sale must be counted as income, but the proceeds that are reinvested are excluded as an allowable cost of doing business;
- G. The separate and identifiable costs related to the portion of a home used for a self-employment enterprise (except for payments on the mortgage principal).

#### **4724 Costs of Producing Self-Employment Income - Unallowable Exclusions**

The following items are not excludable costs of producing self-employment income:

- A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;
- B. Net losses from previous periods;
- C. Depreciation; and
- D. The Federal, State and local income taxes and retirement plan of the self-employed individual. Also, work-related expenses for that individual, such as transportation to and from work. These expenses are accounted for by the 20 percent earned income deduction (see paragraph 4551, above).

#### **4725 Prorating Self-Employment Income**

- A. When Self-Employment Income Represents Annual Income. Self-employment income that represents a household's annual income must be prorated over a 12-month period, even if the income is received at one time. For example, the self-employment income received by a farmer is prorated over a 12-month period if the income is intended to support the farmer on an annual basis. This self-employment income must be annualized even if the household receives income from other sources in addition to self-employment (see 4725C, below).
- B. When Self-Employment Income is Received Monthly. Self-employment income that is received on a monthly basis, but represents a household's annual support, is normally prorated over a 12-month period. For example, a self-employed landscaper may receive income each month from the various jobs he does throughout the year. However, if the averaged amount from past months does not accurately reflect the household's actual or anticipated circumstances, because the household has recently experienced or expects a substantial increase or decrease in business, the ITO/State agency must calculate the self-employment income based on anticipated earnings.
- C. When Self-Employment Income is Part of Total Annual Household Income. Self-employment income that is intended to meet the household's needs for only part of the year must be prorated over the period of time the income is intended to cover. For example, self-employed vendors that work only in the summer and supplement their income with other types of employment during the balance of the year must have their self-employment income prorated over the summer months rather than a 12-month period.

(4725)

- D. When Self-Employment Enterprise is a New Business. If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be prorated over the period of time the business has been in operation and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to be able to base a longer projection.

#### 4726 Stable and Unstable Self-Employment Income

- A. Stable Self-Employment Income. Self-employment income and expenses may be fairly consistent on a monthly or annual basis. If the household anticipates that its self-employment income and expenses will not change significantly, then the ITO/State agency may choose to use the household's Internal Revenue Service (IRS) filings as a guide in determining the household's anticipated self-employment income for the proration period (see paragraph 3532, above).
- B. Unstable Self-Employment Income. Self-employment income and expenses may vary from month to month, or year to year, and the previous year's tax return may not reflect the household's anticipated circumstances for the proration period. The ITO/State agency should review the household's most recent income and expense receipts, and attempt to determine, with the household, what its anticipated income and expenses will be for the proration period. When determining anticipated self-employment income, the ITO/State agency must include any capital gains the household anticipates it will receive during the proration period (see paragraph 4722, above).

#### 4727 Determining Monthly Self-Employment Income

The following steps should be followed in determining the monthly income for each self-employment enterprise engaged in by the household:

- A. Determine the period over which the self-employment income will be prorated (see paragraph 4725, above). For example, a landscaper works 10 months out of the year, but this income represents his annual income, so his self-employment income will be prorated over a 12-month period.
- B. Total the gross self-employment income (including capital gains) for the period of proration. For example, the landscaper received payments totaling of \$20,965 over the 10 months that he worked.
- C. Subtract the total costs of doing business from the total gross self-employment income. For example, the landscaper had receipts totaling \$9,784 for allowable costs of doing business. This leaves self-employment income of \$11,181 ( $\$20,965 - \$9,784 = \$11,181$ ).

Reminder: Only allowable business expenses associated with this enterprise can be subtracted from the income of this enterprise. Business expenses from another self-employment enterprise can not be subtracted from the landscaping business income.

(4727)

- D. Divide the result from 4727D, above, by the number of months determined in 4727A, above. For example, the landscaper's monthly self-employment amount would be \$932 ( $\$11,181 \div 12 \text{ months} = \$931.75$ , and rounded to \$932).
- E. This amount is the monthly self-employment amount. Apply this amount (and the monthly self-employment amount from any other self-employment enterprise) to the calculation of the household's monthly income at paragraph 4640B, above.

**NOTE:** When using the household's most recent tax return as a guide, certain business deductions that are allowed for income tax purposes are not considered allowable costs of doing business for Food Distribution Program purposes. For example, depreciation is an allowable business deduction for IRS purposes, but **is not** an excludable cost of doing business under the Food Distribution Program.

Also, certain items are counted as income for income tax purposes that are not counted as income for Food Distribution Program purposes. The following are items listed as income for income tax purposes that are not considered income for Food Distribution Program purposes:

Schedule C: Line 6 – Federal and State gas or fuel tax credit or refund

Schedule F: Line 7 – Loans

Line 8 - Crop insurance proceeds/disaster payments

Line 10 - Federal and State gas or fuel tax credit or refund

#### **4730 HOUSEHOLDS WITH DISQUALIFIED MEMBERS**

Individual household members may be disqualified from the Food Distribution Program for several reasons (see paragraph 3413, above). During the period of time a household member is disqualified, the following procedures must be used to determine the eligibility of any remaining household members for participation in the Food Distribution Program.

#### **4731 Applying Financial Eligibility Standards**

- A. Resources. The total amount of the nonexcludable resources of the disqualified member is counted in determining the eligibility of the remaining household members. If a disqualified member acquires additional resources during the disqualification period, these are also considered available to the remaining household members.
- B. Income. A pro rata share of the nonexcludable income of the disqualified member is counted as income to the remaining members. This pro rata share is calculated by first subtracting the 20 percent earned income deduction from the disqualified member's earned income, if applicable, and dividing the total income evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members. For example, if the disqualified individual was a member of a four-person household, 3/4 of the income of the disqualified member (after the earned income deduction is subtracted, if applicable) would be counted as income to the household.

**4740 HOUSEHOLDS WITH NONHOUSEHOLD MEMBERS**

See paragraph 3410, above, for a description of nonhousehold members.

- A. Income and Resources. The income and resources of the nonhousehold member is not considered available to the household. Cash payments from the nonhousehold member to the household are considered income unless the nonhousehold member is making vendor payments. Vendor payments are excluded as income (see paragraph 4542, above).
- B. Income Deductions. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household is deducted as a household expense. If the payments or contributions can not be differentiated, the expenses must be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share is deducted.